

STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT
PETROLUUM STORAGE TANK BUREAU

REQUEST FOR PROPOSALS

RFP No. 50-667-30-00001

**STATE LEAD REMEDIATION AND SITE INVESTIGATION SERVICES
FOR LEAKING UNDERGROUND STORAGE TANK INDIAN HILLS SITE
ADMINISTERED BY THE NEW MEXICO ENVIRONMENT
DEPARTMENT, PETROLEUM STORAGE TANK BUREAU**

August, 2004

TABLE OF CONTENTS

I.	ADVERTISEMENT	Page No. 2
II.	INTRODUCTION	3
	A. PURPOSE OF THIS REQUEST FOR PROPOSALS	3
	B. SUMMARY SCOPE OF WORK	3
	C. SCOPE OF PROCUREMENT	4
	D. PROCUREMENT MANAGER	4
	E. DEFINITION OF TERMINOLOGY	5 thru 8
	F. BACKGROUND INFORMATION	8 thru 9
	G. PROCUREMENT LIBRARY	9
III.	CONDITIONS GOVERNING THE PROCUREMENT	10
	A. SEQUENCE OF EVENTS	10
	B. EXPLANATION OF EVENTS	11 thru 13
	C. GENERAL REQUIREMENTS	14 thru 18
IV.	RESPONSE FORMAT AND ORGANIZATION	19
	A. NUMBER OF RESPONSES	19
	B. NUMBER OF COPIES	19
	C. NUMBER OF PAGES IN THE PROPOSAL	19
	D. PROPOSAL FORMAT	19
	E. PROPOSAL ORGANIZATION	19 thru 20
	F. LETTER OF TRANSMITTAL	20
	G. MANDATORY SPECIFICATIONS	20
V.	SPECIFICATIONS	21
	A. PROJECT APPROACH	21
	B. EXPERIENCE AND REFERENCES	21
	C. HEALTH & SAFETY PLAN	21
	D. COST EFFECTIVENESS	22
VI.	EVALUATION	23
	A. EVALUATION POINT SUMMARY	23
	B. EVALUATION FACTORS	24
	C. EVALUATION PROCESS	25
VII.	APPENDICES:	
	A. Acknowledgment of Receipt Form	26
	B. Sample Professional Services Contract	27 thru 36

I. ADVERTISEMENT

REQUEST FOR PROPOSALS

#50-667-30-00001

STATE LEAD REMEDIATION AND SITE INVESTIGATION SERVICES FOR LEAKING UNDERGROUND STORAGE TANK INDIAN HILLS SITE ADMINISTERED BY THE NEW MEXICO ENVIRONMENT DEPARTMENT, PETROLEUM STORAGE TANK BUREAU

The New Mexico Environment Department is requesting proposals for the purpose of procuring State Lead Remediation and Site Investigation Services Indian Hills Site administered by the New Mexico Environment Department's Petroleum Storage Tank Bureau. All proposals submitted shall be valid for ninety (90) days subject to all action by the Environment Department. Proposals shall only be accepted by qualified Firms submitting proposals in relation to the Scope of Work as identified within the RFP. The Environment Department reserves the right to reject any and all proposals in part or in whole. A completed proposal shall be submitted in a sealed box or envelope indicating the proposal title and number along with the Proponents name and address clearly marked on the outside of the box or envelope. **All proposals shall be received by 3:00 p.m., Mountain Daylight Savings Time, October 7, 2004, at the office of the Procurement Manager, District I Office, 4131 Montgomery Boulevard NE, Albuquerque, New Mexico.** By submitting a proposal for the requested materials and/or services each Proponent is certifying that their proposal is in compliance with regulations and requirements stated within the Request for Proposals.

EQUAL OPPORTUNITY EMPLOYMENT: All qualified offerors will receive consideration of contract(s) without regard to race, color, religion, sex, sexual preference or national origin.

Request for Proposals will be available by contacting Thomas Leck, Procurement Manager, Environmental Protection Division, New Mexico Environment Department at (505) 841-9479 or by mail at 4131 Montgomery Boulevard NE, Albuquerque, NM 87109. Request for Proposals may also be obtained through NMED's website at <http://www.nmenv.state.nm.us/NMED/asd.html>.

ANY PROPOSALS RECEIVED BY THE OFFICE OF THE PROCUREMENT MANAGER AFTER THE TIME AND DATE SPECIFIED SHALL NOT BE CONSIDERED.

Environmental Protection Division
New Mexico Environment Department
Published August 12, 2004

II. INTRODUCTION

A. PURPOSE OF THIS REQUEST FOR PROPOSALS

The State of New Mexico's Environment Department is requesting proposals for the design and implementation of a remediation plan and for site investigation work as required in support of the New Mexico Environment Department's Petroleum Storage Tank Bureau.

The purpose of this Request For Proposals (RFP) is to select a contractor that can complete the described work below. Work will be performed at the direction of the Petroleum Storage Tank Bureau, New Mexico Environment Department, (NMED). The contractor will be compensated for services provided at the Indian Hills site and for approved deliverables. NMED reserves the right to award a contract to more than one Offeror or to cancel the procurement if it has been determined to be in the best interest of NMED or the State of New Mexico.

B. SUMMARY SCOPE OF WORK

The New Mexico Environment Department (NMED) requests that qualified firms submit a proposal, with costs, for performance of Phases 3, 4, and 5 corrective action activities consisting of completion of remediation system design modifications, including engineering plans and specifications, provision of bottled water and dispensers to a minimum of four affected residents, implementation of the remediation design modifications, remediation system operation and maintenance, and ground water monitoring and reporting at the Indian Hills/Canyon Auto Site in Tijeras, NM. The selected offeror will operate one total fluids pump in one well, will separate fluids at the surface, and will treat fluids as needed. No modifications beyond this scope of work are required for this RFP. Phase 1 and 2, and additional Phase 3, 4 and 5 corrective action activities may be required at some point during the life of the contract. Details of those potential activities are not currently known and therefore cannot be outlined in this scope of work. Approval of additional scopes of work deemed necessary by NMED shall be contingent upon the costs being reasonable and customary. The above-referenced work must be performed in accordance with the requirements of the New Mexico Petroleum Storage Tank Regulations, 20.5 NMAC. Based on the remediation strategy at this site, detail in your proposal must include all environmental permits necessary to complete the scope of work outlined above.

Site Information:

Numerous technical reports and other information detailing site activities completed to date are available for review at the New Mexico Environment Department's District I Office. Please contact the Procurement Manager, named in Section II.D of this RFP, to set up an appointment to view these documents.

Responders recommending additional work beyond the scope of this request for proposals must provide separate costs by task for those additional activities. Major remediation equipment, as defined in 20.5.17.7.B.6 NMAC, will not be procured for this site.

C. SCOPE OF PROCUREMENT

The goal of this RFP is to put into place a contract for the services described in the Scope of Work, (Section II.B). In addition, NMED may engage the contractor to perform additional site work, as it deems necessary due to particular site conditions. It is anticipated that the contract will begin in January 2005 or as soon as possible for an initial term of one (1) year. The contract may be renewed on an annual basis for three (3) additional years. In no case will the contract exceed a total of four (4) years in duration.

D. PROCUREMENT MANAGER

NMED has designated a Procurement Manager who is responsible for the conduct of this procurement whose name, address and telephone number are listed below.

Mr. Thomas Leck, Procurement Manager
New Mexico Environment Department
Environmental Protection Division
District I Office
4131 Montgomery Boulevard NE
Albuquerque, New Mexico 87109
Telephone (505) 841-9479
FAX (505) 881-9645
e-mail: Thomas_Leck@nmenv.state.nm.us

Any inquiries or requests regarding this procurement must be submitted to the Procurement Manager in writing. Inquiries and requests made to other state employees will not be answered. All responses to inquiries will be available for review on the World Wide Web through NMED's Home Page or by requesting a copy from the Procurement Manager.

E. DEFINITION OF TERMINOLOGY

The following terms used throughout this RFP, including appropriate abbreviations, shall have the following meanings:

"Contract" means an agreement for the procurement of items of tangible personal property, services, or professional services.

"Department" means the New Mexico Environment Department.

"Desirable" The terms "may", "can", "should", "preferably", or "prefers" identify a desirable or discretionary item or factor.

"Determination" means the written documentation of a decision of the Procurement Manager including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.

"DFA" means the New Mexico Department of Finance and Administration.

"Director" means the Director of the Environmental Protection Division of the New Mexico Environment Department.

"Evaluation Committee" means a body appointed by NMED's management to perform the evaluation of offeror proposals.

"Evaluation Committee Report" means a report prepared by the Procurement Manager and the Evaluation Committee for submission to NMED for contract award that contains all written determinations resulting from the conduct of the procurement requiring the evaluation of competitive sealed proposals.

"Finalist" means an offeror who meets all the mandatory specifications of the Request for Proposal and whose score on evaluation factors is sufficiently high to qualify that offeror for further consideration by the Evaluation Committee.

"Mandatory" The terms "must", "shall", "will", "is required", or "are required", identify a mandatory item or factor. Failure to meet a mandatory item or factor will result in the rejection of the offeror's proposal.

"Offeror" is any person, corporation, or partnership who chooses to submit a proposal.

"Operator" means any person in control of, or having responsibility for, the daily operation of a storage tank system.

"Owner" means, in the case of a storage tank in use on November 8, 1984, or brought into use after that date, any person who owns a storage tank used for storage, use, or dispensing of regulated substances; and in the case of a storage tank in use before November 8, 1984 but no longer in use on that date, any person who owned such tank immediately before the discontinuation of its use.

"Person" means any individual, trust, firm, joint stock company, federal agency, corporation including a government corporation, partnership, association, state, municipality, commission, political subdivision of a state, or any interstate body. "Person" includes a consortium, a joint venture, a commercial entity, and the United States Government.

"Petroleum" means crude oil, crude oil fractions, and refined petroleum fractions, including gasoline, kerosene, heating oils and diesel fuels.

"Petroleum tank system", "petroleum storage tank" or "petroleum UST" or "petroleum AST" means a storage tank system that contains an accumulation of petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, lubricants, petroleum solvents, and used oils.

"Phase 1 of Corrective Action" means, as defined in 20.5.17.7.B.(8).(a) NMAC, the secondary investigation and report, tier two evaluation and report, and tier three evaluation and report.

"Phase 2 of Corrective Action" means, as defined in 20.5.17.7.B.(8).(b) NMAC, removal of non-aqueous phase liquid and contaminant saturated soil.

"Phase 3 of Corrective Action" means, as defined in 20.5.17.7.B.(8).(c) NMAC, the development of the conceptual and final remediation plan.

"Phase 4 of Corrective Action" means, as defined in 20.5.17.7.B.(8).(d) NMAC, the implementation of the remediation plan.

"Phase 5 of Corrective Action" means, as defined in 20.5.17.7.B.(8).(e) NMAC, the operation, monitoring, maintenance and reporting of an implemented remediation plan.

"Procurement Code" means Chapter 13, Sections 13-1-28 to 13-1-199 NMSA 1978.

"Procurement Code Regulations" means General Services Department (GSD) Rule 93-601.

"Purchase Order" means the document which directs a contractor to deliver services pursuant to an existing contract.

"Qualified firm" means a company, firm, or person qualified by NMED under 20.5.16 NMAC to undertake corrective action.

"Regulated substance" means (1) any substance defined in Section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) 42 U.S.C. Section 9601 (14), but not including any substance regulated as a hazardous waste under subtitle C of the federal Resource Conservation and Recovery Act, as amended; and (2) petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure of 60 degrees Fahrenheit and 14.7 pounds per square inch absolute.

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from a storage tank system into groundwater, surface water, or subsurface soil.

“Remediation” is the process of reducing the concentration of contaminants in air or soil to a level that poses an acceptable risk to public health, safety, and welfare and the environment.

"Request for Proposals" or "RFP" means all documents, including those attached or incorporated by reference, used for soliciting proposals.

“Resident Business” means, as defined in 20.5.17.7.B.(10).(a) and (b) NMAC, a business enterprise which is authorized to do and is doing business under the laws of New Mexico and which maintains its principal place of business in New Mexico; or has staffed an office and has paid applicable New Mexico taxes for two years prior to the awarding of the proposal and has five or more employees who are residents of New Mexico, or is an affiliate of a business which meets either of these requirements. As used in this paragraph, “affiliate” means an entity that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with the qualifying business through ownership of voting securities representing a majority of the total voting power of the entity; or a business enterprise, including a sole proprietorship, partnership or corporation, that: offers for sale or lease or other form of exchange, goods, commodities or services that are substantially manufactured, produced or assembled in New York state; or, in the case of construction services, has its principal place of business in New York state.

"Responsible Offeror" means an offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that its financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the professional services or items of tangible personal property described in the proposal.

"Responsive Offer" or "Responsive Proposal" means an offer or proposal which conforms in all material respects to the requirements set forth in this Request for Proposals. Material respects of a request for proposals include, but are not limited to, price, quality, quantity or delivery requirements.

“Secretary” means the Secretary of the New Mexico Environment Department also known as the Secretary of the Environment.

“Site” means a place where there is or was at a previous time one or more storage tanks and may include areas contiguous to the actual location or previous location of the tanks.

"Spill" means (1) any spill or overfill of a regulated substance that exceeds the reportable quantity under CERCLA (40 CFR 302); or (2) any spill or overfill of petroleum that exceeds 25 gallons or causes a sheen on surface water or reaches ground water; or (3) any spill or overfill of petroleum of 25 gallons or less, the cleanup of which cannot be accomplished within 24 hours.

"State Purchasing Agent" or "SPA" means the purchasing agent for the State of New Mexico at GSD or a designated representative thereof.

"Tank" means a stationary device designed to contain an accumulation of regulated substances which is constructed of non-earthen materials (e.g., concrete, steel, plastic) that provide structural support.

“Underground Release” means any below ground release.

"Underground Storage Tank" or "UST" means a single tank or combination of tanks, including underground pipes connected thereto, which are used to contain an accumulation of regulated substances and the volume of which, including the volume of the underground pipes connected thereto, is ten per cent or more beneath the surface of the ground. The term does not include any: (1) farm, ranch or residential tank of 1,100 gallons or less capacity used for storing motor fuel or heating oil for noncommercial purposes; (2) septic tank; (3) pipeline facility, including gathering lines which are regulated under the federal Natural Gas Pipeline Safety Act of 196, 49 U.S.C. App. 1671, et seq., or the federal Hazardous Liquid Pipeline Safety Act of 1978, 49 U.S.C. App. 2001, et seq., or which is an intrastate pipeline facility regulated under state laws comparable to either act; (4) surface impoundment, pit, pond or lagoon; (5) storm water or wastewater collection system; (6) flow-through process tank; (7) liquid traps or associated gathering lines directly related to oil or gas production and gathering operations; (8) storage tank situated in an underground area, such as a basement, cellar, mineworking drift, shaft or tunnel, if the storage tank is situated upon or above the surface of the floor; or (9) pipes connected to any tank which is described in paragraphs (1) through (8) of this subsection.

"UST system" or "tank system" means an underground storage tank and its associated ancillary equipment and dispensing and containment system, if any.

Abbreviations include the following:

(ASD) New Mexico Environment Department Administrative Services Division
(CERCLA) Comprehensive Environmental Response, Compensation and Liability Act
(DFA) New Mexico Department of Finance and Administration
(GSD) New Mexico General Services Department
(MDT) Mountain Daylight Savings Time
(MST) Mountain Standard Time
(NMED) New Mexico Environment Department
(OFB) Office of Finance & Budget
(RFP) Request for Proposal
(PSTB) Petroleum Storage Tank Bureau
(PSTR) New Mexico Petroleum Storage Tank Regulations, 20.5 NMAC

F. BACKGROUND INFORMATION

1. THE NEW MEXICO ENVIRONMENT DEPARTMENT'S MISSION

The New Mexico Environment Department's mission is to provide the highest quality of life throughout the state by promoting a safe, clean, and productive environment.

2. THE NEW MEXICO ENVIRONMENT DEPARTMENT'S GOALS AND OBJECTIVES

We, as custodians of our environment will:

- a. Take a holistic approach to the protection of human health and the environment;
- b. Protect the environmental resources of New Mexico and the health and safety of its citizens and visitors;

- c. Establish environmental baselines for communities across the state and focus on pollution prevention;
- d. Revamp and restructure the pollution prevention program in a way that truly prevents and reduces pollution throughout New Mexico;
- e. Value diversity to improve our ability as a Department to communicate across racial, linguistic and socio-economic lines, public participation and the quality of our decisions will improve;
- f. Seek out that diversity in every corner of the state and we will listen to it;
- g. Focus to looking outside of Santa Fe and Albuquerque, and into our communities;
- h. Harness the energy of our best employees in order to achieve results that matter to the mission of the Department and to the health and environment of New Mexico;
- i. Reward high performance and conversely provide sanctions for workers that aren't accomplishing what is required.

The New Mexico Environment Department was established under the provisions set forth in the Department of the Environment Act by the 40th. Legislature, enacted July 1, 1991 (Laws of 1991, Chapter 25) NMSA 1978, Sections 9-7A-1 thru 14.

The New Mexico Environment Department Secretary's Office is located in the Harold Runnels Building, 1190 St. Francis Drive, Santa Fe, NM.

G. PROCUREMENT LIBRARY

The Procurement Manager has established a Procurement Library. Offerors are encouraged to review the material contained in the Procurement Library by contacting the Procurement Manager and scheduling an appointment. The Procurement Library will be located in the New Mexico Environment Department Environmental Protection Division District I Office at the address given in Section II.D of this proposal. Offerors are welcome to take notes in the Procurement Library or to bring a portable copy machine to the library. Other than offeror-reproduced copies, materials cannot be removed from the library. Copies requested by the offerors may be made by NMED for a fee of \$.25 per copy.

The library contains information listed below:

- State of New Mexico Procurement Regulations, 1.4.1 NMAC
- New Mexico Petroleum Storage Tank Regulations, 20.5 NMAC
- New Mexico Petroleum Storage Tank Bureau Guidelines for Corrective Action
- New Mexico Water Quality Control Commission Regulations
- Map of Albuquerque with highlighted key locations

III. CONDITIONS GOVERNING THE PROCUREMENT

This section of the RFP contains the schedule of procurement, describes the major procurement events and the conditions governing the procurement.

A. SEQUENCE OF EVENTS

The Procurement Manager will make every effort to adhere to the following schedule. Offerors will be notified of any extension.

	Action	Responsibility	Calendar Date
1.	Issue RFP	NMED/SPD	August 12, 2004
2.	Pre-Proposal Conference	NMED, Potential Offerors	August 26, 2004
3.	Distribution List Response No later than 5:00 PM, MDT	Potential Offerors	August 26, 2004
4.	Deadline to Submit Additional Written Questions No later than 5:00 PM, MDT	Potential Offerors	September 2, 2004
5.	Response to Written Questions/RFP Amendments	Department	September 9, 2004
6.	Submission of Proposal No later than 3:00 PM, MDT	Offeror	October 7, 2004
7.	Proposal Evaluation	Evaluation Committee	November 4, 2004
8.	Selection of Finalists	NMED/Evaluation Committee	
9.	Best & Final Offer	Finalists	December 1, 2004
10.	Oral Presentation	Finalists	December 2, 2004
11.	Selection of Contractor	Evaluation Committee	December 9, 2004
12.	Finalize Contract	NMED, Contractor	January 6, 2005
13.	Contract Award	NMED	January 13, 2005
14.	Protest Deadline No later than 5:00 PM MST	Offerors	January 28, 2005

B. EXPLANATION OF EVENTS

The following paragraphs describe the activities listed in the sequence of events shown above in Section III.A.

1. Issue RFP

This RFP is being issued by NMED on August 12, 2004. Additional copies of the RFP can be obtained from the Procurement Manager.

2. Pre-Proposal Conference

A pre-proposal conference will be held on August 26, 2004 at 10:00 am, MDT in the Los Griegos Community Center conference room, 1231 Candelaria NW in Albuquerque, New Mexico. Potential offerors are encouraged to submit written questions in advance of the conference to the Procurement Manager (See Section II.D). The identity of the organization submitting the question(s) will not be revealed. Additional written questions may be submitted at the conference. All written questions will be addressed at the conference. A public log will be kept of the names of potential offerors that attended the pre-proposal conference. Attendance at the pre-proposal conference is not a prerequisite for submission of a proposal.

3. Distribution List Response

Potential offerors must hand deliver or return by facsimile or by registered or certified mail the "Acknowledgment of Receipt For Proposals Forms" that accompanies this document (See Appendix A) to have their organization placed on the procurement distribution list. The form must be signed by an authorized representative of the organization, dated and returned by 5:00 PM MDT on August 26, 2004. The procurement list will be used for the distribution of any RFP amendments and answers to questions. Failure to return this form shall constitute a presumption of receipt and rejection of the RFP, and the potential offeror's organization name shall not appear on the distribution list.

4. Deadline to Submit Additional Written Questions

Potential offerors may submit written questions as to the intent or clarity of this RFP until 5:00 P.M., MDT on the day of September 2, 2004. All written questions must be addressed to the Procurement Manager, (Section II.D). Questions received after this date will not be addressed.

5. Response to Written Questions/RFP Amendments

Written responses to written questions and any RFP amendments will be distributed on September 9, 2004, to all potential offerors whose organization name appears on the procurement distribution list. This information will also be posted on the NMED website. The Procurement Manager must receive additional written requests for clarification of distributed answers, and/or amendments, no later than five (5) days after the answers and/or amendments were issued.

6. Submission of Proposal

ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN 3:00 PM MDT OCTOBER 7, 2004. **Proposals received after this deadline will not be accepted.** The date and time of receipt will be recorded on each proposal. Proposals must be addressed and delivered to the Procurement Manager at the address listed in Section II.D. Proposals must be submitted in a sealed box or envelope indicating the proposal title and number along with the Proponents name and address clearly marked on the outside of the box or envelope. **Proposals submitted by facsimile will not be accepted.** A public log will be kept of the names of all offeror organizations, which submitted proposals. Pursuant to Section 13-1-116, NMSA 1978, the contents of any proposal shall not be disclosed to competing offerors prior to contract award. A completed set of cost detail forms shall be submitted with the proposal in a separate sealed envelope. This separate envelope shall be sealed and labeled to clearly indicate that it contains the completed cost detail forms for this RFP with your firm's name clearly printed.

7. Proposal Evaluation

Proposals received within the date and time specified above will be evaluated by an evaluation committee designated by NMED. This process will take place between October 7, 2004 and November 4, 2004. During this time, the Procurement Manager may at his discretion initiate discussions with offerors who have submitted responsive, or potentially responsive proposals for the purpose of clarifying aspects of the proposals. Proposals may be accepted and evaluated without such discussion. Discussions shall not be initiated by the offerors.

8. Selection of Finalists

Once all proposals have been evaluated, based upon the evaluation factors as set forth in this RFP, (Section VI.A.), the Procurement Manager will notify the finalists and the non-finalists.

9. Best and Final Offers from Finalists

Finalists may submit revisions to their proposals for the purpose of obtaining best and final offers by December 1, 2004. Best and final offers may be clarified and amended at the Finalist's oral presentation.

10. Oral Presentation/Demonstration by Finalists

The evaluation committee will require the Finalists to present their proposals to the evaluation committee. The Procurement Manager will schedule the time for each Finalist presentation. All Finalist presentations will be held in the Los Griegos Community Center conference room located at 1231 Candelaria NW in Albuquerque, New Mexico on December 2, 2004. Each presentation will be limited to a maximum of 30 minutes in duration with an additional 15 minutes for questions and answers. Best and final offers

may be discussed at the Finalist's presentation. NMED shall not be responsible for any costs or expenses incurred by an offeror to make an oral presentation.

11. Selection of Contractor

The Evaluation Committee will select the winning contractor on December 9, 2004.

12. Finalize Contract

It is anticipated that the professional services contract will be finalized with the most advantageous offeror between December 9, 2004 and January 6, 2005. In the event that mutually agreeable terms cannot be reached within the time specified, NMED reserves the right to finalize a contract with the next most advantageous offeror without undertaking a new procurement process or to cancel the procurement as NMED may deem in the best interests of the state.

13. Contract Award

After receipt and review of the Evaluation Committee report, the recommendation of NMED management and the signed contract, it is intended that the NMED will award a contract on January 13, 2005. This date is subject to change at the discretion of the NMED.

The contract shall be awarded to the offeror whose proposal is most advantageous to the state, taking into consideration the evaluation factors set forth in the RFP. The proposal selected may or may not be the proposal with the lowest cost. The award is subject to appropriate State approvals.

14. Protest Deadline

Any protest by an offeror must be timely and conform to NMSA 1978, Section 13-1-172 and other applicable procurement regulations. The fifteen (15) day protest period for responsive offerors shall begin on the day following the contract award and will end at the close of business on January 28, 2005. Protests must be written and must include the name and address of the protester and the RFP number. It must also contain a statement of grounds for protest including appropriate supporting exhibits, and it must specify the ruling requested from the State Purchasing Agent. The protest must be delivered to the Protest Manager at the address below:

Phyllis J. Martinez
Protest Manager
NMED Environmental Protection Division, OFB
1190 St. Francis Drive
Santa Fe, New Mexico 87505
Mailing Address:
New Mexico Environment Department
P.O. Drawer 26110
Santa Fe, New Mexico 87502-0110

PROTESTS RECEIVED AFTER THE PROTEST DEADLINE WILL NOT BE ACCEPTED.

C. GENERAL REQUIREMENTS

This procurement will be conducted in accordance with the State Purchasing Agent's procurement code regulations, 1.4.1 NMAC.

1. Acceptance of Conditions Governing the Procurement

Submission of a proposal constitutes acceptance of the Conditions Governing the Procurement and the Evaluation Factors contained in Section VI of this RFP.

2. Incurring Cost

Any cost incurred by the offeror in preparation, transmittal, presentation of any proposal or material submitted in response to this RFP shall be borne solely by the offeror. Any cost incurred by the offeror for set up and demonstration of the proposed equipment and/or system shall be borne solely by the offeror.

3. Prime Contractor Responsibility

Any sub-contract that may result from this RFP shall specify that the contractor is solely responsible for fulfillment of the contract with NMED. NMED will make contract payments to only the prime contractor.

4. Subcontractors

Subcontracting of services is permissible with prior approval of NMED. Use of subcontractors must be clearly explained in the proposal, and major subcontractors must be identified by name. The prime contractor shall be wholly responsible for the entire performance whether or not subcontractors are used.

5. Amended Proposals

An offeror may submit an amended proposal before the deadline for receipt of proposals. Such amended proposals must be complete replacements for a previously submitted proposal and must be clearly identified as such in the transmittal letter. NMED will not merge, collate, or assemble proposal materials.

6. Offerors' Rights to Withdraw Proposal

Offerors will be allowed to withdraw their proposals at any time prior to the deadline for receipt of proposals. The offeror must submit a written withdrawal request, signed by the offeror's duly authorized representative, addressed to the Procurement Manager. The approval or denial of withdrawal requests received after the deadline for receipt of the proposals is governed by the applicable procurement regulations.

7. Proposal Offer Firm

Responses to this RFP, including proposal prices, will be considered firm for ninety (90) days after the due date for receipt of proposals or sixty (60) days after receipt of a best and final offer if one is submitted.

8. Disclosure of Proposal Contents

The proposals will be kept confidential until a contract is awarded by the New Mexico Environment Department and the New Mexico Department of Finance and Administration. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for the material which the offeror has clearly identified as proprietary or confidential. The Procurement Manager will not disclose or make public any pages of a proposal on which the offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements.

Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. Confidential data is normally restricted to confidential financial information concerning the offeror's organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, NMSA 1978, Sections 57-3A-1 to 57-3A-7. The price of products offered or the cost of services proposed shall not be designated as proprietary or confidential information. If a request is received for disclosure of data for which an offeror has made a written request for confidentiality, the State Purchasing Agent and the New Mexico Environment Department legal council shall examine the offeror's request and make a written determination that specifies which portions of the proposal should be disclosed. Unless the offeror takes legal action to prevent the disclosure, the proposal will be so disclosed. The proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

9. No Obligation

This procurement in no manner obligates the State of New Mexico or any of its agencies to the eventual rental, lease, purchase, hire etc., of any equipment, software, services or professional services offered unless and until a valid written contract is approved by the by the New Mexico Environment Department and the New Mexico Department of Finance and Administration.

10. Termination

This RFP may be canceled at any time and any or all proposals may be rejected in whole or in part if NMED determines such action to be in the best interest of the State of New Mexico.

11. Sufficient Appropriation

Any contract awarded as a result of this RFP may be terminated if sufficient appropriations or authorizations do not exist. Such termination will be effected by sending written notice to the contractor. NMED's decision as to whether sufficient appropriations and authorizations are available will be accepted by the contractor as final.

12. Legal Review

NMED requires that all offerors agree to be bound by the General Requirements contained in this RFP. Any offeror concerns must be promptly brought to the attention of the Procurement Manager.

13. Governing Law

This procurement and any contract with offerors shall be governed by the laws of the State of New Mexico.

14. Basis for Proposal

Only information supplied by NMED in writing through the Procurement Manager or in this RFP should be used as the basis for the preparation of offeror proposals.

15. Liability Insurance

- A. A successful offeror who is awarded a contract shall furnish general comprehensive liability insurance for property damage in the amount of \$2,000,000.00 for each occurrence (annual), as well as \$1,000,000.00 for bodily injury, each person, to a maximum of \$2,000,000.00 each occurrence (annual).
- B. A successful offeror who is awarded a contract shall furnish evidence that all equipment to be used pursuant to this Contract is covered by public liability and property damage insurance with a good and reputable insurance company, authorized to do business in New Mexico. The Contractor shall furnish evidence that each motor vehicle to be used by the Contractor pursuant to this Contract is covered in the minimum amount of \$500,000.00 for bodily injury to, or death of, one person in any one accident, and subject to said limit for one person. In addition, a limit of \$1,000,000.00 for bodily injury to, or destruction of property of others in any one accident must be provided.
- C. The insurance company issuing the Contractor's general comprehensive liability insurance coverage shall furnish NMED with a certificate of such insurance with the provision that the policies are not subject to cancellation during the term of the Contract except upon thirty (30) days written notice to NMED. The above requirements shall become an integral part of this Contract.
- D. The Contractor shall furnish evidence that operators, employed by the Contractor to operate equipment needed to meet the requirements of this Contract, are covered by Worker's Compensation Insurance as provided by the New Mexico Worker's Compensation Act.
- E. If NMED does not ask to see or to receive the aforementioned policies, such failure to act shall not operate as a waiver of the Contract term.
- F. It is specifically agreed between the parties executing this Contract that it is not intended by any of the provisions of any part of the Contract to create in the public or any member thereof a third party beneficiary or to authorize any one a party to the Contract to maintain a suit(s) for wrongful death(s), bodily and/or personal injury(ies) to persons, damages to property(ies) or any other claim whatsoever pursuant to the provisions of this Contract.

16. Contract Terms and Conditions

The contract between NMED and a contractor will follow the format specified by NMED in Appendix B. NMED reserves the right to negotiate with a successful offeror provisions in addition to those contained in Appendix B of this RFP. The contents of this RFP, as revised and/or supplemented, and the successful offeror's proposal will be incorporated into the contract.

Should an offeror object to any of NMED's terms and conditions, that offeror must propose specific alternative language. NMED reserves the right to reject any or all of offer's proposed alternative language. In submitting an offer, Offeror agrees to accept Appendix B unamended. General references to the offeror's terms and conditions or attempts at complete substitutions are not acceptable to NMED and will result in disqualification of the offeror's proposal.

Offerors must provide a brief discussion of the purpose and effect of each proposed change followed by the specific proposed alternate wording.

All contracts for professional services are subject to the review and approval of DFA pursuant to Section 13-1-118, NMSA 1978 and 2.40.2, NMAC 1.4.1.

Pursuant to Section 13-1-118, NMSA 1978, 2.40.2 NMAC, and 1.4.1 NMAC, all professional services contracts which may involve the aggregate expenditure of more than \$200,000 shall be reviewed and approved by the Department of Finance and Administration and the Attorney General prior to execution by NMED.

17. Contract Deviations

Any additional terms and conditions, which may be the subject of negotiation, will be discussed only between NMED and the selected offeror and shall not be deemed an opportunity to amend the offeror's proposal. Any additional terms and conditions that NMED may, at NMED's sole discretion, accept will be incorporated into any final contract.

18. Offeror Qualifications

The Evaluation Committee may make such investigations as necessary to determine the ability of the offeror to adhere to the requirements specified within this RFP. The Evaluation Committee will reject the proposal of any offeror who is not a responsible offeror or fails to submit a responsive offer as defined in NMSA 1978, Sections 13-1-83 and 13-1-85.

19. Right to Waive Minor Irregularities

The Evaluation Committee reserves the right to waive minor irregularities. The Evaluation Committee also reserves the right to waive mandatory requirements provided that all of the otherwise responsive proposals failed to meet the same mandatory requirements and the failure to do so does not otherwise materially affect the procurement. This right is at the sole discretion of the Evaluation Committee.

20. Change in Contractor Representatives

NMED reserves the right to require a change in contractor representatives if the assigned representatives are not, in the opinion of NMED, meeting its needs adequately.

21. Notice

The Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kick-backs.

22. Department Rights

NMED reserves the right to accept all or a portion of an offeror's proposal.

23. Right to Publish

Throughout the duration of this procurement process and contract term, potential offerors, offerors and contractors must secure from NMED written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement or the subsequent contract. Failure to adhere to this requirement may result in disqualification of the offeror's proposal or termination of the contract.

24. Ownership of Proposals

All documents submitted in response to the RFP shall become the property of NMED and the State of New Mexico.

25. Use of Electronic Versions of this RFP

This RFP is being made available by electronic means. If accepted by such means, the offeror acknowledges and accepts full responsibility to ensure that no changes are made to the RFP. In the event of conflict between a version of the RFP in the offeror's possession and the version maintained by the NMED, the version maintained by the NMED shall govern.

26. Access

It is the Contractor's sole responsibility to determine whether or not legal access is available to the site before beginning work on the site. If no legal access is available to the site, the Contractor will not begin any work on the site until legal access has been acquired.

27. General Liability

As between NMED and the Contractor, each party shall be responsible for liability arising from personal injury or damage to persons or property occasioned by its own agents or employees in the performance of this Contract. Subject in all instances to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1, et Seq. NMSA 1978, and any amendments thereto.

IV. RESPONSE FORMAT AND ORGANIZATION

A. NUMBER OF RESPONSES

Only one proposal shall be submitted by each offeror for consideration.

B. NUMBER OF COPIES

Offerors shall deliver one (1) original and four (4) identical copies of each proposal to the person and location specified in Section II.D on or before the closing date and time for receipt of proposals.

C. NUMBER OF PAGES IN THE PROPOSAL

The proposal for this site shall be limited to ten (10) pages in length, including figures, diagrams, spreadsheets, charts and photographs. Documentation regarding required attachments, a proposal summary, references, maps, your corporate health and safety plan, project staff and corporate experience, and all cost detail forms are exempt from this page limitation requirement.

D. PROPOSAL FORMAT

Responses consisting solely of marketing material, or electronic versions of proposals, will be deemed non-responsive and will be rejected on that basis. All proposals must be typewritten with a font equal to or larger than 10, on standard 8 ½" x 11" paper. Larger paper is permissible for charts, maps, spreadsheets, etc., but in no instance shall the paper size exceed 11" x 17". All materials must be placed within a binder with tabs delineating each section. The appropriate supporting forms provided to the offeror in the Appendices to this RFP must be completed. Completeness, clarity and brevity should be emphasized.

E. PROPOSAL ORGANIZATION

The proposal must be organized and indexed in the following format and must contain, as a minimum, all listed items in the sequence indicated.

INDEX TAB	CONTENTS
a)	Letter of Transmittal
b)	Table of Contents
c)	Proposal Summary for Scope of Work
d)	Response to Mandatory Technical Specifications
e)	Response to Agency Terms and Conditions
f)	Offeror's Additional Terms and Conditions (If Any)
g)	Other Supporting Material
h)	Mandatory-Offeror's Cost Response to the RFP (Section V.D.)

Within each section of their proposal, offerors should address the items in the order in which they appear in this RFP. All forms provided in the RFP must be thoroughly completed and included in

the appropriate section of the proposal. All discussion of proposed costs, rates or expenses must occur only on the cost detail forms. **Cost detail forms should be submitted in a separate envelope from the remainder of the proposal.** Any proposal that does not adhere to these requirements may be deemed non-responsive and rejected on that basis.

The offeror shall include a proposal summary (section “c” above) with a one page maximum length to provide the Evaluation Committee with an overview of the technical and business features of the proposal. The proposal summary will not count toward the proposal page length limitations described in Section IV.C.

F. LETTER OF TRANSMITTAL

Each proposal must be accompanied by a letter of transmittal. The letter of transmittal MUST:

- a) Identify the submitting organization;
- b) Identify the name and title of the person authorized by the organization to contractually obligate the organization;
- c) Identify the name, title and telephone number of the person authorized to negotiate the contract on behalf of the organization;
- d) Identify the names, titles and telephone numbers of persons to be contacted for clarification;
- e) Explicitly indicate acceptance of the Conditions Governing the Procurement stated in Section III.C.1;
- f) Be signed by the person authorized to contractually obligate the organization;
- g) Acknowledge receipt of any and all amendments to this RFP.

G. MANDATORY SPECIFICATIONS

Please see Section V of this RFP for the information to be included in this section of your proposal.

V. SPECIFICATIONS

This section contains technical specifications and other relevant information.

Offerors should respond in the form of a narrative to each specification. The narrative along with the required supporting material will be evaluated and awarded points according to the Evaluation Factors presented in Section VI.

A. PROJECT APPROACH

Offerors must include in the response, a narrative of the ability to perform the scopes of work, as detailed in Section II.B., addressing the requirements of 20.5 NMAC and this Request for Proposals.

B. EXPERIENCE AND REFERENCES

1. Corporate and Staff Experience

Offerors must include, in the proposal, documentation demonstrating the firm's experience with regards to the scope of work as outlined in Section II.B of this RFP.

Documentation demonstrating the firm's availability and details regarding the firm's available equipment, facilities and services necessary to complete the scope of work Section II.B must be submitted. Additional information should be included regarding organization size and administrative support staff. The offeror must submit with their proposal a statement of corporate experience in mitigation of PST related or equivalent situations. The relevant corporate experience of any subcontractors must also be included.

Offerors must also include, in the proposal, credentials of the key personnel responsible for the completion of the site specific scope of work. These credentials must include but are not limited to the following: academic degrees and other pertinent training information, and experience in storage tank site investigations and remediation or other relevant experience. The resumes or experience narratives attached thereto should describe the specific experience of each proposed staff member as it relates to knowledge of and experience in petroleum storage tank site investigations and remediation or other relevant experience. This is not subject to the page limitations.

2. References

Offerors must submit three (3) references of previous clients who have received similar services to those proposed by the offeror for this contract. Each reference must include the organization name, name of the contact person, address, telephone number and description of services provided. Current NMED Petroleum Storage Tank Bureau personnel may not be used as references.

C. HEALTH AND SAFETY PLAN AND QA/QC PROCEDURES

The offeror must include a copy of their firm's basic Health and Safety Plan. In addition, the offeror must include a copy of their firm's quality assurance/quality control procedures. These documents are not subject to page limitations.

D. COST EFFECTIVENESS

The offeror must propose a firm, fixed cost for each project task described below. You should include all costs necessary to complete these items and tasks, including equipment and supplies, professional hours, subcontractor costs and expenses. **For this cost comparison, do not include New Mexico Gross Receipts Tax.** Offerors may include any other element of cost that is appropriate for the procurement, but these costs should be separated from the costs required below.

- Provision of potable bottled water to four households for one year. Assume that each household will need ten five gallon containers of bottled water per month;
- One- year of remediation system operation and maintenance. The selected offeror will operate one total fluids pump in one well, will separate fluids at the surface, and will treat fluids as needed.;
- Four quarterly groundwater monitoring and reporting events. Assume that you will be using EPA Method 8260 on all current groundwater monitoring wells;
- The costs of all environmental permits necessary to complete the Scope of Work outlined in Section II.B.

The applicable New Mexico Gross Receipts Tax will be paid by the Contractor and reimbursed by NMED, but for the purposes of this exercise, do not include New Mexico Gross Receipts Tax in your cost calculations. The successful offeror will include the appropriate New Mexico Gross Receipts Tax during the workplan approval part of this process. Any additional work that your firm is recommending for this site should be included in the technical portion of your proposal, but should not be included in your cost proposal.

NMED does not and will not offer in-house support for work completed in response to this RFP or the resulting contract.

VI. EVALUATION

Note: Please thoroughly review the evaluation point summary (Section VI.A and VI.B of this RFP). In order for your proposal to be properly evaluated, documentation for all of the categories in Section VI.A and VI.B must be submitted.

A. EVALUATION POINT SUMMARY

The following is a summary of evaluation factors and the point value assigned to each. These weighted factors will be used in the evaluation of the individual offeror proposals. Points will be awarded on the basis of the following evaluation factors:

	Points
1. PROJECT APPROACH	
Does the proposal address the requirements of this RFP?	50
Does the proposal address the requirements of the PSTR?	50
Are the proposed system modifications and system operation protocols appropriate for this site?	225
Does the proposal demonstrate strong theoretical and practical understanding of the investigation and/or remediation strategy and site specific conditions?	225
2. EXPERIENCE AND REFERENCES	
Proposed project staff members relevant experience	50
Offeror's relevant corporate experience	25
References	25
Health and Safety Plan	50
3. COST EFFECTIVENESS OF SERVICES PROVIDED	
a. Cost Effectiveness	300
Total	===== 1,000

B. EVALUATION FACTORS

1. PROJECT APPROACH - Up to 550 points, as outlined in Section V.A.1, will be awarded based upon the technical merit to the project approach including the thoroughness, understanding and applicability of the approach as measured against the elements of the detailed site specific scope of work.

Technical merit will be based on the following:

- Responsiveness to the RFP documents, the PSTB Guidelines for Corrective Action and the NMED Petroleum Storage Tank Regulations.
 - Plans for successfully completing the Scope of Work outlined in Section II.B.
 - The proposed remediation system modifications and system operation protocols and their appropriateness to this site.
2. EXPERIENCE, REFERENCES AND HEALTH AND SAFETY PLAN - Up to 75 points (50 points for project staff and 25 for corporate) will be awarded based upon the offeror's corporate and proposed staff experience, and experience on similar projects. Up to 25 points will be awarded based on the offeror's corporate references with regard to customer satisfaction, quality and timeliness of work performed for previous clients and the company's experience in successfully and promptly completing tasks similar to the site specific tasks to be performed pursuant to this RFP. Up to 50 points will be awarded based on the thoroughness and applicability of the offeror's health and safety plan.
 3. COST EFFECTIVENESS

The evaluation of each offeror's cost proposal will be conducted using the following formula:

$$\frac{\text{Lowest Responsive Offer Grand Total Cost}}{\text{This Offeror's Grand Total Cost}} \times 300 = \text{Points Award}$$

Pursuant to the PSTR 20.5.17.301.E NMAC, providing for an in-state preference, for the purposes of assigning points for this criterion, the costs submitted by an offeror who is a "resident business" will be multiplied by a factor of 0.95 prior to beginning evaluation of this factor.

The evaluation of each offeror's cost proposal will be based on the total proposed cost listed on the cost detail forms for the tasks in Section V.D.

C. EVALUATION PROCESS

The following paragraphs describe the process used to evaluate the submitted proposals.

1. All offeror proposals will be reviewed for compliance with the mandatory requirements as stipulated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.
2. The Evaluation Committee may use other sources of information to perform the evaluation as specified in Section III.C.
3. Responsive proposals will be evaluated on the factors in Section V which have been assigned a point value. The responsible offerors with the highest scores will be selected as finalist offerors based upon the proposals submitted.
4. Finalist offerors will be required to present their proposals to the Evaluation Committee. The factors by which the oral presentations will be evaluated are: quality and clarity of the presentation, knowledge and experience of key staff, ability to answer technical and application questions, and demonstrated understanding of the project and its site specific conditions. Finalists should be prepared to discuss their best and final offer for their proposal during the oral presentation.
5. The responsive offeror whose proposal is most advantageous to NMED, taking into consideration the evaluation factors in Section VI and the oral presentations, will be recommended for contract award. Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

APPENDIX A

Acknowledgment of Receipt Form

REQUEST FOR PROPOSALS

No. 50-667-30-00001

STATE LEAD INVESTIGATION / REMEDIATION SERVICES – INDIAN HILLS

In acknowledgment of receipt of this Request for Proposal, the undersigned agrees that they have received a complete copy of the RFP including Appendices.

The acknowledgment of receipt should be signed and returned to the Procurement Manager no later than **5:00 p.m. Mountain Daylight Savings Time on August 26, 2004**, via facsimile, or U.S. mail. Only potential offerors who elect to return this form completed with the indicated intention of submitting a proposal will receive copies of all offeror written questions and the Agency's written responses to those questions as well as RFP amendments, if any are issued.

FIRM: _____

REPRESENTED BY: _____

Phone No.: _____

TITLE: _____

Fax No.: _____

E-MAIL: _____

ADDRESS: _____

CITY: _____

STATE: _____

ZIP CODE: _____

SIGNATURE: _____

DATE: _____

This name and address will be used for all correspondence related to the Request for Proposal.

Firm does/does not (circle one) intend to respond to this Request for Proposals.

Mr. Thomas Leck, Procurement Manager
NMED/Environmental Protection Division
District I Office
4131 Montgomery Boulevard NE
Albuquerque, New Mexico 87109

Phone: (505) 841-9479

Fax: (505) 881-9645

APPENDIX B

Contract No.

STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT
PROFESSIONAL SERVICES CONTRACT

THIS CONTRACT is made and entered into by and between the New Mexico Environment Department (Department), and _____ (Contractor)

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. Scope of Work.

The Contractor shall perform Phases 3, 4, and 5 corrective action activities consisting of completion of remediation system design modifications, including engineering plans and specifications, provision of bottled water and dispensers to a minimum of four affected residents, implementation of the remediation design modifications, remediation system operation and maintenance, and ground water monitoring and reporting at the Indian Hills/Canyon Auto Site in Tijeras, NM. Contractor shall operate one total fluids pump in one well, will separate fluids at the surface, and will treat fluids as needed. Contractor shall submit workplan(s) (workplan), which must be approved in writing by Department representatives possessing Signatory Authority as designated by Department policy in effect on the date of the workplan. The workplan shall be prepared and approved, and the work completed, pursuant to the New Mexico Petroleum Storage Tank Regulations and Corrective Action Fund Payment and Reimbursement Regulations. If there are any inconsistencies between a workplan and this Contract, this Contract shall govern. No Work at new or additional sites may be assigned to the Contractor under this Contract. Upon this Contract becoming effective, existing contracts and workplans regarding the site are terminated and are superseded by this Contract.

Any workplan amendments must be approved in writing by Department representatives possessing Signatory Authority as designated by Department policy in effect on the date of the amendment. No person other than the person possessing Signatory Authority has actual or apparent authority to amend, modify or change the workplan in any manner. Any written amendment to the workplan signed by a person not possessing Signatory Authority is void and unenforceable.

Contractor's proposal, all amendments and the best and final offer submitted in response to RFP No. 50-667-30-00001 are incorporated by reference into this contract.

2. Compensation.

A. The total amount payable to the Contractor under this contract, including New Mexico gross receipts tax, is \$_____.

- B. *The New Mexico gross receipts tax levied on the amounts payable under this contract shall be paid by the Contractor.*
- C. *The Department shall pay the Contractor upon Department approval of the deliverables and services specified in the workplan and Department receipt of a detailed statement setting forth the work performed and the expenses incurred. Such statements shall be submitted to:*

*New Mexico Environment Department
Petroleum Storage Tank Bureau
Financial Management Program
P.O. Box 26110
Santa Fe, New Mexico 87502-6110*

- D. *Within fifteen days after the date the Department receives written notice from the Contractor that payment is requested for services or deliverables, the Department shall issue a written certification of complete or partial acceptance or rejection of the charges. If the Department finds that the services or deliverables are not completely acceptable, it shall provide a letter of exception explaining the defect or objection to the services or deliverables. The letter of exception shall include details for the Contractor to proceed to remedy any deficiency. Upon certification by the Department that the services or deliverables have been received and completely accepted, payment shall be tendered to the Contractor within thirty days after the date of certification. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. After the thirtieth day from the date that written certification of acceptance is issued, late payment charges shall be paid on the unpaid balance due on the workplan to the Contractor at the rate of 0.2% (two-tenths per cent) per month*

3. Access.

It is the Contractor's sole responsibility to determine whether or not legal access and/or utilities are available to the site before beginning work on site. Contractor will not begin any work on the site until legal access has been acquired, availability of utilities has been determined, and the location of underground utilities present at the site have been adequately.

4. Term.

THIS CONTRACT SHALL NOT BECOME EFFECTIVE UNTIL SIGNED BY THE PARTIES AND APPROVED BY THE DEPARTMENT OF FINANCE AND ADMINISTRATION. This contract shall be terminated on _____ unless terminated pursuant to paragraph 5 or paragraph 6 infra.

5. Termination.

- A. *This Contract may be terminated by either of the parties upon written notice delivered to the other party at least thirty (30) days prior to the intended date of*

termination. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination. THE PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE OTHER LEGAL RIGHTS AND REMEDIES AFFORDED THE STATE IN SUCH CIRCUMSTANCES AS CONTRACTOR'S DEFAULT/BREACH OF CONTRACT.

- B. If termination for default is effected by the Department, an equitable adjustment in the price provided for in this Contract shall be made, but no amount shall be allowed for anticipated profit on unperformed services or other work. If termination is caused by Contractor default, any payment due to the Contractor at the time of termination may be adjusted to cover any additional costs to the Department because of the Contractor's default. The equitable adjustment for any termination shall provide for payment to the Contractor for services rendered and expenses incurred prior to the termination.*
- C. Upon receipt of a termination action under paragraph (A) above, the Contractor shall 1) promptly discontinue all affected work (unless the notice directs otherwise), and 2) deliver or otherwise make available to the Department all data, reports, and such other information and materials as may have been accumulated by the Contractor in performing this Contract, whether completed or in process.*
- D. Upon termination under paragraph (A) above, the Department may take over the work and may award another party a Contract to complete the work under this Contract.*
- E. If after termination for failure of the Contractor to fulfill contractual obligations, it is determined that the Contractor had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the Department. In such an event, adjustment of the Contract price shall be made as provided in paragraph (B) of this clause.*

6. Appropriations.

The terms of this Contract are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Contract. If sufficient appropriations and authorization are not made by the Legislature, this Contract shall terminate upon the Department's written notice to the Contractor. The Department's decision as to whether sufficient appropriations and authorization are available shall be accepted by the Contractor and shall be final.

7. Contractor's Liability Insurance.

- A. The Contractor shall furnish general comprehensive liability insurance for property damage in the amount of \$2,000,000.00 for each occurrence (annual), as well as, \$1,000,000.00 for bodily injury, each person, to a maximum of \$2,000,000.00 each occurrence (annual).*
- B. The Contractor shall furnish evidence that all equipment to be used pursuant to this Contract is covered by public liability and property damage insurance with a good and reputable insurance company, authorized to do business in New*

Mexico. The Contractor shall furnish evidence that each motor vehicle to be used by the Contractor pursuant to this Contract is covered in the minimum amount of \$500,000.00 for bodily injury to, or death of, one person in any one accident, and subject to said limit for one person. In addition, a limit of \$1,000,000.00 for bodily injury to, or death of, two or more persons in any one accident, and to a limit of \$1,000,000.00 for injury to, or destruction of property of others in any one accident must be provided.

- C. The insurance company issuing the Contractor's general comprehensive liability insurance coverage shall furnish the Department with a certificate of such insurance with the provision that the policies are not subject to cancellation during the term of the Contract except upon thirty (30) days written notice to the Department. The above requirements shall become an integral part of this Contract.*
- D. The Contractor shall furnish evidence that all personnel performing any work under this Contract, are covered by Workers' Compensation Insurance as provided by the New Mexico Workers' Compensation Act.*
- E. The Contractor shall name the New Mexico Environment Department as an additional insured party on all policies pertaining to this Contract.*
- F. If the Department does not ask to see or to receive the aforementioned policies, such failure to act shall not operate as a waiver of this Contract term.*
- G. It is specifically agreed between the parties executing this Contract that it is not intended by any of the provisions of any part of the Contract to create in the public or any member thereof a third party beneficiary or to authorize any one not a party to the Contract to maintain a suit(s) for wrongful death(s), bodily and/or personal injury(ies) to persons, damages to property(ies) or any other claim whatsoever pursuant to the provisions of this Contract.*

8. General Liability.

- A. As between the Department and the Contractor, each party shall be responsible for liability arising from personal injury or damage to persons or property occasioned by its own agents or employees in the performance of this Contract, subject in all costs to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1, et. Seq. NMSA 1978, and any amendments thereto.*
- B. The Contractor agrees to hold the Department harmless against any claims asserted against the Department arising out of the Contractor's use, possession, control or maintenance of any machinery or equipment used in connection to this Contract.*

9. Status of Contractor.

The Contractor and its agents, subcontractors and employees are independent contractors performing professional services for the Department and are not employees of the State of New Mexico. The Contractor and its agent, subcontractors and employees

shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Contract. The Contractor acknowledges that all sums received hereunder are personally reportable by it for income tax purposes as self-employment or business income and are reportable for self-employment tax.

10. Responsibility of Contractor.

- A. *The Contractor is responsible for the professional quality, technical accuracy, timely completion and coordination of all designs, drawings, specifications, reports, and other services furnished by the Contractor under this Contract. The Contractor shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in the Contractor's designs, drawings, specifications, reports and other services.*
- B. *The Department's approval of drawings, designs, specifications or reports shall in no way relieve the Contractor of responsibility for the technical adequacy of this work. The Department's review, approval, acceptance, or payment for any of the services shall not be construed as a waiver of any rights under this Contract or of any cause for action arising out of the performance of this Contract.*
- C. *The Contractor's obligations under this clause are in addition to the Contractor's other express or implied assurances under this Contract or New Mexico state law and in no way diminish any other rights that the Department may have against the Contractor for faulty materials, equipment, or work.*
- D. *The Contractor is required to comply with New Mexico local, state, and federal rules, statutes, regulations and licensing requirements.*

11. Assignment.

The Contractor shall not assign or transfer any interest in this Contract or assign any claims for money due or to become due under this Contract without the prior written approval of the Department.

12. Subcontracting.

The Contractor may subcontract for those services which are not within the Contractor's area of expertise, (e.g. laboratory analysis), and are necessary to perform services as requested by the Department. It is the Contractor's responsibility to ensure that such services are satisfactory before billing the Department. The Department will pay the Contractor for the subcontractor's services. It is the Contractor's responsibility to ensure that the subcontractor is reimbursed for services, and that the subcontractor possesses all of the required licenses and/or permits to perform the required work. This responsibility includes without limitation, all required licenses and permits under other applicable statutes or regulations.

13. Records and Audit.

The Contractor shall maintain detailed time records that indicate the date, time and nature of services rendered. These records shall be subject to inspection by the Department and the State Auditor for up to three years after final payment. The Department shall have a right to audit billings both before and after payment; payment under this Contract shall not foreclose the right of the Department to recover excessive and/or illegal payments.

14. Release.

The Contractor's acceptance of final payment of the amount due under this Contract shall operate as a release of the Department, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Contract. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has expressed written authority to do so, and then only within the strict limits of that authority.

15. Confidentiality.

Any confidential information provided to or developed by the Contractor in the performance of this Contract shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Department.

16. Product of Service -- Copyright.

All materials developed or acquired by the Contractor under this Contract shall become the property of the State of New Mexico and shall be delivered to the Department no later than the termination date of this Contract. Nothing produced, in whole or in part, by the Contractor under this Contract shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

17. Conflict of Interest.

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Contract. The Contractor certifies that the requirements of the Governmental Conduct Act, NMSA 1978, Sections 10-16-1 through 10-16-17(1995), regarding contracting with a public officer or state employee have been followed.

18. General Professional Liability.

The Contractor warrants that it has professional errors and omissions insurance to reimburse the Department for liability arising from its work under each Department approved workplan.

19. Amendment.

This Contract shall not be altered, changed or amended except by instrument in writing executed by the parties' representatives having properly delegated Signatory Authority and also to be approved by the Department of Finance Administration.

20. Merger.

This Contract incorporates all the contracts, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, contracts and understandings have been merged into this written Contract. No prior contract or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Contract.

21. Notice.

The Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199 (1997 and 1998), imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

22. Equal Opportunity Compliance.

The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. The Contractor agrees to assure that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, sexual preference, age or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Contract. If Contractor is found to not be in compliance with these requirements during the life of this Contract, Contractor agrees to take appropriate steps to correct these deficiencies.

23. Applicable Law.

- A. *The laws of the State of New Mexico shall govern this contract.*
- B. *The Contractor agrees to comply with New Mexico laws and rules including those applicable to worker compensation benefits for its employees. If the Contractor fails to comply with the Worker's Compensation Act and applicable rules when required to do so, the Department may terminate this contract .*
- C. *The Contractor agrees to comply with all applicable federal and state laws.*

24. Covenant Against Contingent Fees.

The Contractor assures that no person or selling agency has been employed or retained to solicit or secure this contract upon agreement or understanding for a commission, percentage, brokerage or contingent fee excepting bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business. For breach or violation of this assurance, the Department shall have the right to annul this Contract without liability or, at its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount to such commission, percentage, or brokerage or contingent fee.

25. Gratuities.

- A. *If the Department finds, after a notice and hearing, that the Contractor or any of the Contractor's agents or representatives offered or gave gratuities (in the form of entertainment, gifts or otherwise) to any official, employee or agent of the Department, the State in an attempt to secure a Contract or favorable treatment in awarding, amending or making any determinations related to the performance of this Contract, the Department may, by written notice to the Contractor, terminate this Contract. The Department may also pursue other rights and remedies that the law or this Contract provides.*
- B. *In the event this Contract is terminated as provided in paragraph (A), the Department may pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract by the Contractor, and as a penalty, in addition to any other damages to which it may be entitled by law, be entitled to exemplary damages in an amount (as determined by the Department) which shall be not less than (3) three nor more than (10) ten times the costs the contractor incurs in providing any such gratuities to any such officer or employee.*

26. *Final Payment.*

If not otherwise terminated by NMED the termination of this Contract occurs when, as a condition before Final Payment under this Contract or as a termination settlement under this Contract, the Contractor executes and delivers to the Department a Release, in the form specifically set forth herein of all known claims against the Department arising under, or by virtue of, this Contract, except claims which are specifically exempted by the Contractor to be set forth therein. Unless otherwise provided in this Contract, by State law or otherwise expressly agreed to by the parties to this Contract, Final Payment under this Contract or settlement upon termination of this Contract shall not constitute a waiver of the Department's claims against the Contractor under this Contract.

27. *Litigation Responsibilities.*

It is anticipated that the Contractor may be called upon to provide factual and expert testimony on behalf of the state or political subdivisions of the state in lawsuits regarding the site in question. The Contractor will be required to provide consultations and serve as a trial witness on issues relating to the subject matter of this Contract. The hourly rates for expert testimony will be in accordance with the Department's Fee Schedule. Reimbursement for factual testimony will be according to applicable state laws and regulations. Certain reports or other work may be undertaken at the direction of government attorneys. Such work shall constitute trial preparation and may not be disclosed without prior consent of those attorneys.

IN WITNESS WHEREOF, the parties have hereto set their hands.

STATE OF NEW MEXICO

CONTRACTOR

By: _____
Ron Curry
Secretary of Environment

By: _____
xxxxxxxx

Date: _____ Date: _____

Approved as to form and Legal Sufficiency

By: _____ (up to \$200,000.00)
General Counsel, NMED

Date:

The Attorney General has reviewed this contract, which is greater than \$200,000.00

By: _____ (\$200,000.00 and above)
Attorney General

Date:

The records of the Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes.

ID Number: 01-876254-009

By: _____
Taxation and Revenue Department

Date:

The Contract has been approved by the DFA Contracts Review Bureau:

By: _____
DFA Contracts Review Bureau

Date: